

# **ARTICLE XVI**

## **ELDERLY OPEN SPACE**

### **A. Purpose**

The standards in this section have been established for the purpose of encouraging the construction of elderly housing developments (or the conversion of existing structures into elderly housing facilities), which are designed and constructed to meet the unique needs of elderly citizens, while ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health, safety and general welfare of the inhabitants of Fremont. Such developments shall not include assisted living and/or extended care facilities.

This ordinance has also been developed to incorporate open space development components for elderly housing projects. The Town of Fremont understands the importance of maintaining open space as a way of preserving rural character, protecting wildlife habitat and preserving important natural resource areas. In an effort to achieve these goals, this ordinance encourages the placement of elderly housing units in relatively compact areas within the development site in order to leave large undeveloped areas free of negative development impacts.

The Town of Fremont recognizes that one aspect of elderly housing development is that the housing built will continue to be put to this use in perpetuity, consistent with restrictive covenants and consistent with the provisions of state and federal law that permit housing units to be restricted by age.

This ordinance is also developed to allow mixed-use development to occur within the project. The standards herein allow service and retail facilities to be developed in conjunction with the creation of elderly housing. These mixed uses are allowed and encouraged because of their inherent connection to the needs of elderly residents and because such uses expand the feeling of community within the elderly development. This Ordinance is adopted pursuant to the provisions of RSA 674:21 (Innovative Land Use Controls), and the Planning Board is hereby empowered and authorized to administer this Ordinance in conjunction with the Selectmen and building officials of the Town of Fremont.

### **B. General Standards**

All elderly housing developments shall conform to the following standards:

1. Elderly housing developments shall be permitted as an overlay district thereby allowed anywhere throughout the Town of Fremont. All elderly housing developments shall occur on a parcel that is a minimum of twenty

(20) acres in size and shall have at least fifty (50) feet of frontage on a Class V road or higher.

2. The total number of elderly housing units approved by the Board under this ordinance in the Town of Fremont shall not exceed ten percent of the total dwelling units in the Town of Fremont. (Explanatory note: for example, the 2000 US Census details 1,201 dwelling units in the Town of Fremont therefore allowing one hundred and twenty (120) elderly units total).
3. The maximum number of bedrooms allowed on a site is three (3) per acre of upland, and shall be calculated as follows:
  - a) Subtract very poorly and poorly drained soils, alluvial soils, and soils with slopes greater than twenty-five (25%) percent from the total parcel acreage.
  - b) Subtract ten (10%) percent of the remaining land for roads and utilities.
  - c) Multiply the resultant acreage by three bedrooms to get the maximum number of bedrooms allowed on the site.

The allowed number of units may be grouped or dispersed over the non-open space areas in any fashion within the limits imposed by this ordinance and existing septic system siting requirements.

If the development is located within the Aquifer Protection District the number of bedrooms allowed per acre of upland is two.

4. Dwelling units shall be specifically designed to provide housing for elderly residents fifty five (55) years old or older. Units shall have a maximum of two bedrooms, may not exceed thirty-five (35) feet in height, and may be either one (1) or two (2) stories. Buildings shall be separated by a minimum space of thirty-five (35) feet. This spatial relationship may be required to be larger if Planning Board review finds that this standard results in inadequate light and air between structures. No building shall exceed more than six (6) individual units per structure. No individual unit shall exceed fifteen hundred (1,500) square feet of living space, and no single-family building shall exceed fifteen hundred (1,500) square feet in living space.
5. Adequate on site space shall be provided for off-street parking for two vehicles per dwelling unit.

6. Building massing and style shall be distinctly residential in character, drawing on historical design elements that are consistent with rural New England architecture and which feature characteristics such as pitched roofs, clapboard or shingle siding, raised panel exterior doors and divided light windows. All such elderly housing developments shall be designed and constructed to compliment and harmonize with the surrounding areas, particularly with regard to the size and scale of the development and its prominence and visibility to the community generally and to surrounding neighborhoods in particular.
7. Except as provided for by this Elderly Housing ordinance, all such elderly housing developments shall comply in all respects with the Town of Fremont's Zoning Ordinance, Site Plan Review Regulations and/or Subdivision Regulations.
8. Dwelling units may be owner-occupied or rented. However, all permanent residents of all elderly housing units shall be at least fifty five (55) years of age.
9. The design and site layout of all such elderly housing developments shall compliment and harmonize with the rural character of the Town of Fremont, shall maximize the privacy of dwelling units and preserve the natural character of the land.
10. All such elderly housing developments shall make provision for pedestrian access (including amenities such as benches, street and path lighting, sidewalks and crosswalks) within the development and, to the extent possible, to off-site community facilities.
11. Each development shall incorporate the construction of a common/community facility to be used for homeowners' association meetings or general community activities. This facility can be incorporated into one of the housing structures or it can be a stand-alone building. For developments of less than twenty dwelling units this community facility is encouraged but not required.
12. All such elderly housing developments shall be landscaped to enhance their compatibility with surrounding areas, with emphasis given to the utilization of natural features wherever possible. The Planning Board may require a plan developed by a landscape architect be prepared for each development.
13. The perimeter of the areas of housing or mixed use development within the site shall be treated with a landscaped buffer zone of a minimum of twenty-five (25) feet which may consist in whole or in part of existing natural grown vegetation.

14. The Planning Board shall require that all roads within the development -- whether owned privately or not -- be built according to Town standards.
15. The Planning Board retains the right to approve the specific road and structure layouts for the purpose of the health, safety, and welfare of the town as well as for efficiency and aesthetic variety and quality of design.
16. The applicant shall demonstrate that all units have been designed to meet the needs and accessibility requirements of the elderly as reflected in the HUD's Fair Housing Accessibility Guidelines.

All units shall be built in accordance with applicable federal, state and local building codes.

### **C. Common Land/Open Space**

In every elderly housing development, common land/open space shall be set aside and covenanted to be maintained permanently as open space. The required amount of open space for all elderly housing developments shall be calculated as follows:

1. No less than thirty three (33%) percent of the gross upland area of the development shall be allocated to open space. Upland area is defined as all soils with slopes less than twenty-five (25 %) percent, and excludes poorly and very poorly drained soils, alluvial soils (subject to flooding), and water bodies. The Planning Board will review each proposal with an eye toward ensuring that the proposed common areas are contiguous, disapproving proposals that carve the open space into small segments that do not achieve the goals defined in the Purpose Section above. It is recommended that sixty (60%) to eighty (80%) percent of the common areas should be contiguous.

In calculating common/open space area the following shall not be included: public right-of-way, alluvial, very poorly and poorly drained soils, soils with slopes over twenty five (25%) percent, and parking lots.

Use of Common Land: Such common land shall be restricted to open space recreational uses such as parks, swimming pools, tennis courts, golf courses, the common meeting facility (found in Section B 11 above), or conservation. While the setbacks, front, rear, and side, are considered part of the common land, none of the above uses shall be allowed within these areas, nor any other uses that would disturb the natural vegetation within these areas. Ninety (90%) percent of the common/open space shall remain undisturbed. These restrictions of the use of the common land (including the landscaped buffered area) shall be stated in the covenants running with the land.

2. Access to open space/common land. Such common land shall have suitable access via a trail, within the development.
3. Protection of Common Land. Open space, common areas, common facilities, private roadways, and other features within the elderly housing development shall be protected by covenants running with the land and shall be conveyed by the property owners to a homeowners association so as to guarantee the following:
  - a) The continued use of land for the intended purposes.
  - b) Continuity of proper maintenance for those portions of the development requiring maintenance.
  - c) The availability of funds required for such maintenance.
  - d) Recovery for loss sustained as a result of casualty, condemnation or otherwise.
  - e) Creation of a homeowners association or tenancy-in-common or similar form of ownership, with automatic membership and obligation of the residents of the elderly housing development upon conveyance of title or lease to single dwelling units. Homeowners association, tenancy-in-common, or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.
- D. It shall be the responsibility of the developer/builder of each such elderly housing development to establish a Home Owner's Association and to prepare and adopt appropriate Articles and By-Laws which are to be submitted in advance to the Planning Board and Town Counsel for their review and approval. In preparing the Articles and By-Laws, particular consideration shall be given to accommodating the unique needs of the elderly citizens and to ensuring that residents of such developments are guaranteed adequate and appropriate services. The creation of the Home Owner's Association and the Articles and By-Laws shall be at the sole expense of the developer/builder and the costs of the review by the Planning Board and Town Counsel shall also be born by the developer/builder. Any association formed for the purpose of elderly housing must have stipulated in their By-Laws and Declaration of Covenants that the Association will at all times be in compliance with current Fremont Ordinances governing elderly housing.

The Applicant/Owner shall incorporate a written enforcement mechanism satisfactory to the Planning Board and its legal counsel whereby on an annual basis, a written age based census of the existing Occupants shall be provided to the Board of Selectmen. Upon any change in ownership or tenancy, the age of any new Occupants shall be given to the Board of Selectmen within thirty (30) days of tenancy/ownership changes.

**E. Mixed Use Component**

Each elderly housing development is encouraged to incorporate retail and /or service facilities. All proposals must comply with the Site Plan Review Regulations of the Town of Fremont as well as building design criteria found in this Ordinance.

- F.** The Planning Board shall maintain and exercise the authority to approve or disapprove all proposed elderly housing developments. The Planning Board shall act reasonably in exercising such discretionary authority but shall take into consideration such factors, for example, as: the health, safety and general welfare of the citizens of Fremont; the aesthetic impact on immediately surrounding areas; whether the design is adequate to meet the unique needs of elderly residents; whether the Articles and By-Laws operate to serve the unique needs of elderly residents; the burdens created by additional demands on Town services; and whether the proposed development complies with the requirements of this Elderly Housing Ordinance, as well as, with the requirement of Fremont's Zoning Ordinance and Subdivision and Site Plan Regulations.

- G.** Residency restrictions for residential projects approved under the Elderly Housing Ordinance shall be accomplished by restrictions recorded in deeds, Condominium Declarations, and/or other documents recorded at the Rockingham County Registry of Deeds. All deeds and covenants shall be subject to review by Town Counsel at the sole expense of the developer/builder, and shall be approved by the Planning Board. Covenants shall expressly provide that they may be specifically enforced by the Town, whether by injunctive relief or otherwise. Covenants shall be signed by the Planning Board, and shall contain language specifying that Board approval is required for any subsequent changes to the covenants. Covenants shall expressly provide that they shall not be amended or modified, nor waivers granted there under, without the prior written approval of the Planning Board.

- H.** The following terms shall have the following meanings for the purpose of interpreting these Elderly Housing Regulations:

1. Elderly Housing Development: Housing contained in a development intended for occupancy by people fifty five (55) years of age and older, and which features predominantly small single family units, apartments and/or condominiums.

2. Bedroom: a room with an interior door and a closet.

- I.** This ordinance shall be reviewed annually by the Planning Board to ascertain whether the balance between the number of standard residential

dwelling units and elderly housing units continues to reflect the stated goals of the Fremont Master Plan and the community's long-term planning intentions.